they do at all, not by reason of what the physician has done; but he also says that the psychoneuroses can be cured, and the psychoneuroses form a very large part of psychiatric practice, and to the psychiatrists belong the credit of the great advance in the treatment of general paresis. Mental mechanisms are still a woefully dark field, and there is no school which can at present claim to have solved this problem.

When it comes to governmental control of psychic healers, which seems to be advocated in Doctor Edler's paper, that is treading on very, very dangerous ground. One is apt to get mixed up in a religious controversy for one thing, and even if one does not, how can a state which cannot control automobile or liquor traffic control psychic healers?

We are still empirics and shall be for a long time to come; but we are measurably better off than our grandfathers and far more prone to confess our ignorance frankly and freely than were our grandfathers.

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H. DOUGLAS EATON, M. D. (1136 West Sixth Street, Los Angeles). — Psychiatry has been slower to emerge from the clouds of ignorance and superstition than other branches of medicine. While Hippocrates clearly recognized mental disorder as a disease due to physical causes, many factors combined to retard the development of a truly scientific viewpoint in regard to the psychoses. In fact, it was not until recently that much was accomplished along these lines.

The present century has seen definite progress in the scientific approach to psychiatric problems, even though there is still room for great improvement. Twenty-five years ago the percentage of "functional" psychoses made up 90 to 95 per cent of the total. Today 30 to 40 per cent of psychiatric cases are recognized as due to structural or organic changes. With the growth of biochemistry and the allied sciences it seems reasonable to expect that the "purely functional" psychosis will gradually vanish. Such a result, as Doctor Edler points out, will only be attained as the result of applying the same rigid rules of investigation as prevail in any science. No speculative or purely subjective theorizing will yield satisfactory results.

Many factors still remain to handicap the cultivation of a truly scientific viewpoint in psychiatry. For example, in many states, including our own, the law places the final diagnosis of insanity in the hands of a jury of laymen; yet even the law would not expect a lay jury to diagnose a case of pernicious anemia or appendicitis. Backed by this legal approval, many of the laity, especially the poorly educated and ignorant, consider that psychiatric problems—actually the most difficult of medical situations—are well within their powers to diagnose and treat. This generally prevailing lay attitude complicates greatly the proper medical care of the psychoses.

Because of the lack of scientific evidence, faddists within and without the medical profession have originated this or that theory to explain mental disease and have broadcast these theories to receptive audiences. Practitioners of the most popular fad within the profession have never published any adequate statistical studies of their therapeutic results, and its exponents usually explain any disagreement with their methods as due to the presence of a hidden disorder in the one who disagrees with them: if you do not believe as I do, then there is something wrong with you! Surely, such lack of the ordinarily accepted rules of scientific research stands in the way of scientific advancement.

Articles on psychiatric subjects by so-called experts, both lay and medical, flood our magazines and the daily press. Radio experts solve psychiatric problems and give advice freely over the air, with the result that those of us who are dealing daily with psychiatric cases must spend a large percentage of our time removing misconceptions before we can establish adequate therapy.

Psychiatry has been further handicapped by a tendency to become overly involved in terminology and classification. This tendency is fortunately subsiding, and we are learning to approach each case as an individual problem, realizing that only through a complete gathering and evaluation of all factual data can we hope to advance psychiatric knowledge and therapy.

THERAPEUTIC SCOPE OF CHIROPRACTIC: A LEGAL BRIEF*

No. 257362

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

In the Matter of the Application of M. James McGranaghan, for Declaratory Relief, Plaintiff, vs. Dora Berger, Intervenor and Defendant, vs. Roy B. Labachotte, Intervenor and Defendant, vs. The People of the State of California, Intervenor.

BRIEF OF INTERVENOR, THE PEOPLE OF THE STATE OF CALIFORNIA

STATEMENT OF QUESTIONS INVOLVED

In the matter at bar the petitioner sought a declaration of his rights and duties under a license to practice chiropractic claimed to be issued pursuant to the provisions of the Chiropractic Act. He alleges graduation from a chiropractic school, but does not allege graduation from a legally incorporated chiropractic school or college, an essential under Section 8 of the Chiropractic Act, Statutes of 1923, page lxxxviii. The petition alleges, however, that he is licensed to practice chiropractic, alleges a conflict exists between persons licensed under the provisions of the Chiropractic Act and persons licensed under the provisions of the Medical Practice Act, Statutes of 1913, Chapter 354, as amended, and licensed chiropractors; and that he is in constant danger of prosecution under the provisions of the Medical Practice Act should he render services in excess of his license, and that he is likewise in a position of jeopardy should a civil action be brought against him for rendering services in excess of his authorized practice.

In paragraph 5 he seeks a construction of Section 7 of the Chiropractic Act to prevent, as he states, "the continued conflict and controversy now existing." He sets forth Section 7 of said Chiropractic Act, which reads as follows:

Sec. 7. One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

and alleges that the college of which he is a graduate now teaches, and at the time of the adoption of the Chiropractic Act and prior thereto, taught the following enumerated subjects:

Anatomy, embryology, physiology, chemistry, toxicology, histology, pathology, neurology, bacteriology, physical diagnosis, laboratory diagnosis, palpation or spinal diagnosis, nerve tracing, chiropractic technique, symptomatology, special technique including replacing shoulder, hip, rib and foot subluxations and dislocations, obstetrics, gynecology, pediatrics, first aid and minor surgery, terminology, hygiene and sanitation, treatment of diseases of the eye, ear, nose and throat, dietetics, psychiatry, x-ray, jurisprudence, mechanotherapy and massage, medical gymnastics, hydrotherapy, colonic therapy, physio-therapy, electro-therapy, photo-therapy, and practice building.

Paragraph VII recites that all of these enumerated subjects and other additional measures are, and were at the time of and prior to the adoption of the Chiropractic Act, taught as *chiropractic* in other chiropractic schools and colleges.

Paragraph VIII of the petition improperly alleges that the District Court of Appeal in the case of *Evans* vs. *McGranaghan*, construed Section 7 of the Chiropractic Act "as authorizing license holders thereunder to practice chiropractic and to use all necessary mechanical hygienic

* See also editorial comment concerning this case, printed on page 380 of this issue. The Court Opinion is printed on page 419 of this issue.

and sanitary measures taught as chiropractic in chiropractic schools and colleges,

"together with any other such necessary mechanical, hygienic and sanitary measures the use of which would not constitute the practice of medicine, surgery, osteopathy, dentistry or optometry, nor involve the use of any drug or medicine now or hereafter included in materia medica."

It is obvious that if the case of *Evans* vs. *McGranaghan* construed what this pleading alleges was construed it would be unnecessary for the petitioner to ask this court to make a finding as to what was there decided.

In said paragraph VIII it is alleged that the term "practice of medicine, or surgery" is indefinite and uncertain, subject to two or more contrary and conflicting interpretations.

By reason of the uncertainty of petitioner and his danger of criminal prosecution and liability for negligence as a result of what petitioner calls "contrary and conflicting interpretations" of the term "practice of medicine, or surgery," it is, in paragraph IX of said petition, alleged that this court should grant him declaratory relief to determine the interpretation of said term "practice of medicine, or surgery," as used in the Chiropractic Act.

Petitioner also seeks declaration of his rights and duties as a license holder under the provisions of the Chiropractic Act and prays for certain stated relief.

To the petition filed by McGranaghan one Dora Berger intervened and alleged chiropractic licensure in California, an adverse interest to petitioner, the possibility of her scope of practice being affected by the proceeding and the fact that no trial thereof had occurred.

She admitted that all of the subjects or measures set forth in paragraph VI of the petition were, at the time of the filing of her complaint in intervention, taught, and previous to the enactment of the Chiropractic Act had been taught, in chiropractic schools and colleges. She denied that any of the subjects or measures are authorized to, or within the practice of a chiropractic licentiate in California except "palpation or spinal diagnosis, nerve tracing, chiropractic technique, x-ray, hygiene and sanitation." She alleged that the remainder of the subjects referred to in said paragraphs were exclusively within the scope of practice of a drugless practitioner or physician and surgeon, both licensed pursuant to the provisions of the Medical Practice Act, and that the practice of such subjects was not authorized to a chiropractic licentiate, was beyond the scope of chiropractic practice and was detrimental to her practice and to her rights. Whereupon, she asked for an interpretation of the Chiropractic Act as not authorizing the use of such subjects and measures.

Based upon certain statements in the case of *Brix* vs. *Peoples Mutual Life Ins. Co.*, 18 Pac. (2d) 103, to wit: the People of the State of California asked permission to, and were granted permission to intervene in said proceeding. The state's theory in so doing was based upon the fact that all licenses granted to practice any form of the healing arts spring from the right of the people to protection from being mistreated or misled by incompetent or unscrupulous licentiates. (*State* vs. *Armstrong* (Idaho), 225 Pac. 491.)

It was and is our view that the individual members of society are entitled to know just exactly how far a person holding a qualified license may prescribe or render treatment. As, for example, no one would seriously contend that a dentist has the right to remove a brain tumor.

The people's intervention admitted the existence of a conflict as to the scope of practice authorized chiropractors, denied the existence of an actual controversy between those licensed under the Medical Practice Act and those licensed under the Chiropractic Act, and alleged the existence of actual controversies between certain persons licensed pursuant to each of said acts. The people's intervention admitted that the petitioner, McGranaghan, was in constant danger of criminal prosecution for rendering services in excess of his authorized practice, as well as admitted that his position would be one of great danger in the event of a civil action for negligence in the use of any measure outside his authorized practice.

The propriety of an interpretation of Section 7 of the Chiropractic Act was also admitted. Paragraph V of the people's answer in intervention denied that the National College of Chiropractic, from which petitioner alleged graduation, taught as chiropractic any of the subjects enumerated in paragraph VI of petitioner's complaint, except "palpation or spinal diagnosis, nerve tracing and chiropractic technique."

Our answer denied that the expression "practice of medicine and surgery" is now or was in the year 1922 (the year the chiropractic initiative was enacted) indefinite or uncertain or subject to two or more contrary and conflicting interpretations.

The people likewise traversed the answer in intervention filed by Dora Berger, though agreeing in the main therewith. We alleged, however, that certain other licentiates than those enumerated by her could do some of the things which she alleged could be done only by a physician and surgeon or a drugless practitioner. As for example, that chiropodists and midwives might perform certain of said acts.

Thereafter the people made further answer to the petitions of McGranaghan and Berger and sought *affirmative relief*. Our allegations were, briefly, that chiropractors might engage in palpation, spinal diagnosis, nerve tracing, chiropractic technique, chiropractic hygiene and chiropractic sanitary measures, but could not engage in any other method of treating the sick or afflicted. We asked that this court determine:

1. What was chiropractic as taught in chiropractic schools or colleges at the time of the adoption of said Chiropractic Initiative Act?

2. What necessary mechanical, and hygienic and sanitary measures incident to the care of the body, if any, may be used by the holder of a license to practice chiropractic in the State of California?

3. What, if any, were, in 1922 or thereafter, the mechanical, and hygienic and sanitary measures incident to the care of the body which are not included within the practice of medicine, surgery, osteopathy, dentistry or optometry, or which did not involve the use of any drug or medicine included in materia medica?

4. That all methods of treatment, save and except those which are chiropractic within the purview of the Chiropractic Initiative Act of California, constitute the practice of medicine, surgery, osteopathy, dentistry or optometry.

A fourth intervention was filed by Roy B. Labachotte, a chiropractic licentiate, who alleged that the doing of all of the things objected to by the State were not chiropractic and were not, prior to or after the adoption of the Chiropractic Act, taught as such, and that the practice of chiropractic consisted solely and not otherwise in:

the adjustment of subluxations or misalignments of the segments of the spine when such subluxations or misalignments cause occlusions of nerves and interference with the transmission of nerve force at or within the spinal column, together with necessary mechanical and hygienic and sanitary measures incident to the care of the body in said practice of chiropractic.

Labachotte further alleged that until Section 7 of the Chiropractic Act is interpreted he and others would continue to practice beyond the lawful scope of practice under the Chiropractic Act, and prayed that the petitioner, McGranaghan, be denied the relief sought, and that he, the intervenor, have judgment construing Section 7 in accordance with the allegations of paragraph IV of his complaint in intervention.

RELATIVE TO THE RELIEF SOUGHT

Whether an application for declaratory relief is proper, is questionable. This was pointed out to the court at the commencement of this proceeding by the intervenor, People of the State of California. . . .

IS CHIROPRACTIC SOMETHING DEFINITE?

The above, we believe, sets forth the issues before this court. We, therefore, seek primarily to ascertain *"What is Chiropractic?"* In approaching the solution to the question we are not bound solely by the language used in *Section 7* of the Chiropractic Act. According to the following cases the Act must be construed as a whole so as to promote and not defeat the general purposes and policy of the law. . . .

We do *not* contend that the entire Act is unconstitutional and that the approximately twenty-eight hundred chiro-

practors in California are without the right to practice chiropractic. We contend that the Act is constitutional and that persons licensed pursuant thereto can practice *chiropractic* (whatever chiropractic is), but we insist that a person licensed under the Act can do no more than practice chiropractic, a definite and specific branch of the healing arts. . . .

Section 7 of the Act provides:

One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

We urge that the prohibitory language contained in Section 7 of the *Chiropractic Act* means exactly what it says. By way of mandate it states a license to practice chiropractic

shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

A legal mandate is stronger than a proviso and the latter is held in this state to be a covenant and condition precedent to the right to be exercised. . . .

DEFINITIONS OF PROHIBITED PRACTICES

Medicine

Section 17 of the Medical Practice Act provides:

Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for or prescribe for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this act, or who shall in any sign or in any advertisement use the word "doctor," the letters or prefix "Dr.," the letters "M.D.," or any other term or letters indicating or implying that he is a doctor, physician and surgeon, physician, surgeon or practitioner, under the terms of this or any other act, or that he is entitled to practice hereunder, or under any other law, * * * shall be guilty of a misdemeanor and upon conviction thereof shall be punished as designated in this act, * * *

From this it would appear that the Medical Practice Act covers *any and all* systems or modes of treating the sick or afflicted. Hence it may be said that the practice of medicine is and was in 1922 defined by statute.

This is further indicated by the language of Section 8 of the Medical Practice Act, which provides for the issuance of various certificates. The section provides in part that:

* * * a certificate authorizing the holder thereof to use drugs or what are known as medical preparations in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities or other physical or mental conditions, which certificate shall be designated "physician and surgeon certificate"; * * *.

How the expression "any and all" methods in the treatment of diseases came into the Medical Practice Act shows the statutory development of medicine and surgery in this State. In the case of *Ex Parte Greenall,* 153 Cal. 767, determined in June, 1908, the petitioner sought a writ of *habeas corpus* after conviction upon a complaint charging violation of the Statutes of 1907, page 252, being entitled:

An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation.

It should be stated that the writ was granted and the petitioner discharged solely because of the language of the complaint. The Court pointed out the history of the statutes regulating the practice of medicine and surgery and state: . . .

From this it is evident that the Act of 1901 defined what constituted the practice of medicine specifically; that the Statutes of 1907 had as broad a meaning as had the Act of 1901 and that the present Act of 1913 is more broad than either of the said acts for the reason that it includes *any and all* methods of treating the sick or afflicted. It may, hence, be said that the Legislature has defined the practice of medicine.

We must follow what our statute defines as the practice of medicine. (*Foo Lung* vs. *State,* 84 Ark. 477; 106 S. W. 946.)

If evidence be needed as to what constitutes the practice of medicine, the testimony of Dr. Ebright, Dr. Rixford, Dr. McKenny, Dr. Langnecker, Dr. Morrell, Dr. Vecki, and Dr. Ruggles certainly covers the situation. Their testimony is to the same effect as is our law and as are the adjudicated cases. In other words, every method that can be used for the alleviation of suffering, the prevention of disease, the correction of a physical or mental condition, is included in the sphere of medicine. (*Commonwealth* vs. *Jewelle,* 199 Mass. 588; 85 N. E. 858.)

Surgery

Surgery is included in our statutory definition. In Section 8 of the Medical Practice Act is the expression "to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, or other physical . . . conditions."

It may likewise be said to be included in Section 17 of the last mentioned act, where an unlicensed person is prohibited from "operating for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition." A type of surgery is included in the art of chiropody. Section 8 of the Medical Practice Act permits certain surgical treatment to be given by a chiropodist, to wit: the surgical treatment of abnormal nails, corns, callosities, bunions and other minor foot ailments not involving the bony structure, and does not confer the right of amputation of toes or joints thereof, except as hereinbefore specified, or any portion of the foot or the severing of any tendon or the use of any anesthetic other than local. Hence it may be said that all forms of surgery are defined by the Medical Practice Act.

The testimony of the experts called on behalf of the State is entirely in accord with the definition of surgery in the Medical Practice Act. Doctor Rixford, it will be recalled, testified that the so-called manipulation of the vertebra of the spine was a surgical operation, although no cutting was done therein.

Osteopathy

The practice of "osteopathy" as that term is used in the Initiative Act, is prohibited to a chiropractor. It is to be noted that the Chiropractic Act does not say that a licensed chiropractor is not to do the things which an osteopath is entitled to do under the law, but says such a licentiate shall not practice osteopathy. Because of the fact that counsel for the intervenor, Labachotte, disagreed in oral argument with counsel for the State as to the meaning of the word "osteopathy," we make the above distinction, because we believe that the people, in voting for the chiropractic initiative, intended to refer to the science of osteopathy rather than to the rights of an osteopath under the law. We concede that the legislature might grant rights to persons holding particular licensure, which could be either in excess or less than such persons were taught. As an example we concede that the legislature could—though we doubt that it would—permit chiropodists to engage in unlimited surgery upon a human being below the ankle. Should it do so the legislature would not change the definition of the word "chiropody," but would merely grant increased rights or privileges to a chiropodist.

It is, therefore, our contention that the expression "osteopathy" used in Section 7 of the chiropractic initiative means osteopathy as the same was theretofore known and in this connection we cite *In re Nowak,* 184 Cal. 701, to the effect that expressions which have theretofore been construed by the Supreme Court and which are later used in an initiative or statutory enactment must receive the interpretation theretofore approved.

In the following cases osteopathy has been defined: . . .

Dentistry

Dentistry is and was defined in the Dental Law of California. It is defined in Section 11 as follows:

A person practices dentistry within the meaning of this act who (1) by card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist, or (2) for a fee, salary or reward, paid directly or indirectly either to himself or to some other person, performs, or offers to perform, an operation of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums or jaws, or corrects malimposed positions thereof, or (3) in any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums or jaws, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance, or (4) makes, or offers to make, an examination of, with the intent to perform or cause to be performed any operation on, the human teeth, alveolar process, gums or jaws, or (5) manages or conducts as manager, proprietor, conductor, lessor, or otherwise a place where dental operations are performed. The following practices, acts and operations, however, are exempt from the operation of this act: (a) The practice of oral surgery by a licensed physician, etc.

Optometry

Optometry is and was defined by statute. Chapter 598 of the Statutes of 1913 (this section has never been amended):

Section 2. The practice of optometry is hereby defined to be the employment of any means other than the use of drugs for the measurement of the powers or range of human vision for the determination of the accommodative and refractive states of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof.

Drugs or Medicines

The use of those drugs or medicines which were in 1922 or should be thereafter included in materia medica is prohibited.

Materia medica is defined in the case of *Millsap* vs. *Alderson,* 63 Cal. App. 518 (August, 1923), as:

the substances employed as remedial agents.

Pursuant to Section 1875 of the Code of Civil Procedure, this court has authority to consult such standard works as the United States Pharmacopoeia, National Formulary, and the booklet which is issued by the American Medical Association between the publications of the first named compilations and which is known as "New and Nonofficial Remedies."

From this it is evident that no drugs or medicines can be used by a chiropractor.

DEFINITION OF CHIROPRACTIC

Because of the expression "any and all" other methods in the treatment of diseases, injuries, etc., which is used in Section 8 of the Medical Practice Act, we contended in oral argument that the practice of medicine covered every field appertaining to the healing arts and included every branch thereof. We directed, for the sake of a simple example, the court's attention to a pie and stated that the field of medicine included the pie in its entirety and that other forms of the healing arts covered segments thereof.

Before the enactment of the Chiropractic Act, persons practicing "chiropractic" without being licensed to practice medicine and surgery or without licensure as drugless physicians were guilty of the offense of practicing medicine without a license. (*People* vs. *Vermillion,* 30 Cal. App. 417; *People* vs. *Oakley,* 30 Cal. App. 519.)

After the enactment of the Chiropractic Act, a person practicing "chiropractic" without being licensed to practice medicine and surgery, drugless practice or chiropractic was guilty of the offense of practicing medicine without a license. Of a consequence, chiropractic must still be included in the field of medicine.

That our contention is sound has been determined by the District Court of Appeal of this State in *People* vs. *Mills,* 74 Cal. App. 353 (September, 1925), in which case a hearing by the Supreme Court was denied. Therein an individual was charged with the practice of medicine without a license. . . .

The first time we find reference to the expression "chiropractic" in the courts of this State is in the case entitled *In re Greenall,* 153 Cal. 767. This case was before our Supreme Court in 1908. . . .

We appreciate that the Supreme Court did not in such case define chiropractic. It did, however, state what the petitioner contended was chiropractic and, historically, such case is important and may be consulted. . . .

The Chiropractic Act prohibits a licentiate thereunder from practicing medicine, surgery, osteopathy, dentistry or optometry and prohibits the use by said licentiate of any drug or medicine. As chiropractic is included in the field of medicine a strict construction of this language would keep a chiropractor from doing anything under the terms of his license.

It is a cardinal rule of statutory construction, however, that laws must be so interpreted as to give effect thereto, if such an interpretation is possible. Accordingly, we contend that the following *dicta* from the case of *Evans* vs. *McGranaghan,* 80 C. A. D. 866, applies:

As we construe section 7 of the Chiropractic Act it authorizes the licenseholder to practice chiropractic * * * regardless of whether such practice would have been construed as the practice of medicine, surgery, osteopathy, dentistry or optometry prior to the enactment of the Chiropractic Act.

In other words, we believe that the chiropractor can practice chiropractic, a limited segment of the field of medicine, but cannot cross the border line from that segment into the forbidden field. Again, the classical example of the pie and the piece thereof. A chiropractor may go from one side of the cut piece of pie to the other, but he cannot cross over into the remaining major segment.

To avoid an absurd interpretation we are forced to conclude that the prohibitory provisions of Section 7 of the Chiropractic Act do not mean exactly what they say. Of necessity there must be a departure from the literal construction of said section. Were this not so, a licensed chiropractor could do nothing by virtue of his license.

By departing from the literal construction we find that a chiropractor can practice chiropractic in so far as chiropractic is included in any of the prohibited practices, but may not pass from the realm of pure chiropractic into the realm of medicine, surgery, etc. Cases approving this doctrine are: . . .

Indeed, in the case of *People of the State of California, etc.* vs. *Steele,* decided in the Superior Court of this State, in the county of Santa Clara, and reversed only because it was tried on a nuisance theory, the court in its opinion stated: . . .

Without attempting to unduly prolong a discussion of the essential character of chiropractic theory, it may be stated, generally, that the science or art of chiropractic is found in these general propositions: that in the brain of the human animal is the point of control of an innate intelligence which sends its controlling forces by way of the spinal cord through the spinal column and then through the various nerve trunks emitting from the spinal cord and passing through the intervertebral foramina to nerve branches ramifying to all parts of the body, through the perfect functioning of which, health is maintained, but through interference with the transmission of those innate forces through or over the nerve, disease is produced; that owing to the spinal column being the only segmented structure of bone through which these nerve trunks pass and the possibility of displacement of its segments changing the size and shape of the intervertebral foramina, subluxation occur and there offer interference with the transmission of innate forces directly or indirectly; that all disease is thus traceable to impingements of nerve tissue in the spinal column. Chiropractic claims the knowledge of this all-inclusive cause of disease and the ability to adjust and correct these displacements of the segments of the spinal column, thereby removing interference with the transmission of the innate forces. It claims that such adjustment does not add any material forces to the body, but allows the innate to restore to normal what it would have had, had there been no interference. In this manner, it is claimed, health is restored.

It will thus be observed that the theory, science or art of chiropractic is quite definitely circumscribed in its character, scope and practice. * * *

INTERPRETATION OF OTHER PORTIONS OF SECTION 7

Having disposed of the practices prohibited to a person holding a license to practice chiropractic, we approach the clause

and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body.

We note that a semicolon precedes the expression "and" which introduces the portion of the sentence here considered. If the effect of the semicolon is to shut off from the preceding portion of Section 7 the thought there contained, obviously a person with a license to practice chiropractic is granted an extra privilege, the privilege being to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body which do not transgress the field of medicine.

Because, however, the testimony in this case shows that all mechanical and hygienic and sanitary measures "indicated as necessary" in a particular case are included in the medical field, it is our view that this clause must be read in the light of the antecedent and subsequent thoughts. The antecedent thought is that a licentiate may practice chiropractic, and from this we conclude that a licentiate may use necessary *chiropractic mechanical,* and *chiropractic hygienic,* and *chiropractic sanitary* measures incident to the care of the body as long as these measures do not enter the prohibited fields.

It is a settled rule of statutory interpretation that

qualifying words and phrases, grammatically and legally, where no contrary intention appears, refer solely to the last antecedent. A proviso is construed to apply to the provision or clause immediately preceding. Where the by-laws of a society provided first for an annual meeting for the election of officers, and then for a monthly meeting on a specified day "at half past seven o'clock p. m." It was held that the clause specifying to the hour of the meeting had reference only to the monthly meeting. (Lewis Southerland, Statutory Construction, 2nd ed., Sec. 420.)

But the same work and same section states:

qualifying words have been applied to several preceding sections where the nature of the provisions and the obvious sense required it. * * *

Therefore, it would seem unimportant what the negative mandate modifies, as chiropractic does not include other than hand adjustment of the vertebra of the back and practically all mechanical, hygienic and sanitary measures are within the realm of the five prohibited fields embraced in or carved out of the field of medicine.

INTERPRETATION OF THE PHRASE "SHALL AUTHORIZE THE HOLDER TO PRACTICE CHIROPRACTIC IN THE STATE OF CALIFORNIA AS TAUGHT IN CHIROPRACTICE SCHOOLS OR COLLEGES"

According to Article IV, Section 1, of the Constitution the Legislature is vested with all legislative power, except in so far as the people reserve to themselves the power to propose laws and amendments to the Constitution and to adopt or reject the same, at the polls, independent of the Legislature.

In *Wallace* vs. *Zinman,* 200 Cal. 585, it was contended that an initiative measure was a constitutional amendment and that as a constitutional amendment it need not conform to the provision of the Constitution requiring every subject contained in the Act to be expressed in its title. It was held that an initiative measure had no greater strength or dignity than a legislative act and had to conform to the Constitution.

If this be the rule as to the initiative measures conforming to that portion of the Constitution requiring the subject of an act to be expressed in its title, it follows that it is likewise the rule in so far as the constitutional requirement prohibiting a delegation of legislative power is concerned.

In the case entitled *In re Peppers,* 189 Cal. 682, it was held that the Legislature had no power to delegate to an administrative board or officer its exclusive power and function of determining what acts or omissions on the part of an individual are unlawful.

In *Knight* vs. *City of Eureka,* 123 Cal. 192, it was held that the Board of Supervisors might not delegate to an attorney power to employ another "if, in his judgment, it becomes necessary."

In *Ex Parte Cox,* 63 Cal. 21, an Act authorizing a commission to make certain quarantine regulations and declare that a violation of them should constitute a misdemeanor was held to be unlawful as a delegation of legislative power.

In *Ex Parte McNulty,* 77 Cal. 164, it was held that the Legislature could not delegate to a board of medical examiners the power of declaring what acts should constitute a misdemeanor.

Petitioner contends throughout his opening brief that a chiropractor can practice any branch of the healing arts which any chiropractic school teaches as "chiropractic." Obviously his contention is based upon the theory that the Initiative Act permits a chiropractic school or college to determine what is chiropractic.

It is evident that if the petitioner is correct in his contention, the Chiropractic Act amended Article III, Section 1, of the State Constitution, and there are now four separate departments of the State government, namely, the executive, judicial, legislative, and chiropractic schools and colleges. Being somewhat old-fashioned, we still contend Article III, Section 1, means what it says, to wit:

The powers of the government of the State of California shall be divided into three separate departments—the legislative, executive, and judicial; * * *.

Under the cases above cited and under the constitutional section, petitioner's contention must fail, as no law has ever been sustained which permitted the faculty of a school to determine what acts might be performed by a person holding a qualified type of licensure. Surely, it cannot be seriously contended that if a chiropractic school taught its pupils that surgery was chiropractic that a chiropractor might thereafter practice surgery.

Petitioner's contention falls squarely in the category of the case of *Ex parte McNulty, supra,* and if a school can determine what is chiropractic, a person can be punished under Section 15 of the Act for doing an act determined to be chiropractic by the school and not by the proper legislative power.

Of a consequence we conclude that the language "in the State of California as taught in chiropractic schools or colleges" means nothing, for, in the first place, the State of California could not grant a license to practice chiropractic in another state (*Dent* vs. *West Virginia,* 129 U. S. 114), and in the second place, if chiropractic schools could determine what constitutes chiropractic, Article IV, Section 1, of the Constitution would be violated .

THE HISTORY OF CHIROPRACTIC IN THE STATE OF CALIFORNIA AND THE EFFECT THEREOF ON THE INTERPRETATION OF THE CHIROPRACTIC ACT

Before the chiropractic law was adopted in California chiropractors had to have a license either as a physician and surgeon or as a drugless practitioner. (*People* vs. *Chung,* 28 Cal. App. 121; *Ex parte Greenall,* 153 Cal. 767; *People* vs. *La Barre, et al.,* 193 Cal. 388.)

In 1920, a chiropractic initiative measure was on the ballot and was defeated. It provided, among other things (Section 6, subdivision c), that a chiropractor would be authorized to practice obstetrics (Section 11); that they might sign birth certificates and diagnose and use such natural agencies as water, food, heat, and electricity, manual and mechanical means and manipulations as auxiliaries in their practice.

The argument in favor of the Chiropractic Act specifically stated:

It does not permit chiropractors to practice medicine or surgery.

Chiropractic is not taught in medical schools nor medical textbooks. The medical doctors neither understand nor believe in chiropractic. They are not competent to examine chiropractors.

It is settled that to ascertain the spirit, intention and purpose of a law a court may look into contemporaneous and prior legislation on the same subject and the external and historical facts and conditions which lead to its enactment. (*Grannis* vs. *Superior Court,* 146 Cal. 245.)

In case of uncertainty as to the construction of an initiative act, it is proper to resort in aid of its interpretation to the arguments submitted to the voters at the time it was voted upon. (*Crooks* vs. *People's Finance and Thrift Co.,* 111 Cal. App. Supp. 769.)

Applying these canons of statutory interpretation, it is quite evident that in the year 1920 an attempt was made to have chiropractic include healing measures which are absent from the Act of 1922 as adopted. There is nothing in the Act of 1922 which permits a chiropractor to do obstetrics or to use water, food, heat, and electricity in his practice.

In the year 1922 a chiropractic measure eliminating medical practices was proposed to the people. The argument in favor of the proposed act stated: It

prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors * * * the teachings and practice of chiropractic are admittedly different from those of medicine.

It would hence appear that chiropractic has a definite meaning and does not include the many matters contended for by the petitioner, McGranaghan.

AS TO MECHANICAL, HYGIENIC AND SANITARY MEASURES

The evidence in the matter at bar shows that there are necessary chiropractic mechanical, chiropractic hygienic and chiropractic sanitary measures. The testimony shows that at one stage in chiropractic a rubber hammer was used upon the vertebra of the spine. While not generally accepted by the profession, it is unquestionably a mechanical measure and as such was used in the year 1922. There is testimony that the chiropractic table is a necessary mechanical measure.

The only evidence in the record as to what is a chiropractic hygienic measure relates to the use of paper towels. These, it appears, are placed upon a chiropractic table and the patient's face placed thereon. The purpose of this is to prevent the patient from coming in contact with such perspiration or disease germs as may have been left by a preceding patient.

There are few sanitary measures which are strictly chiropractic. Indeed, most things used in sanitary measures are included in the realm of *materia medica*. The use of soap and water for cleansing the body of a patient is distinctly a sanitary measure and is not prohibited by Section 7.

As early as the year 1926, it was conceded by the Attorney-General that a chiropractor might use an x-ray for the purpose of analyzing or diagnosing the physical condition of a patient. Our opinion rendered at that time reads as follows:

January 26, 1926.

State Board of Chiropractic Examiners,
Forum Building,
Sacramento, Calif.
Attention: Dr. James Compton, Secy.

Gentlemen:

I have before me your communication under date of January 2nd, 1926, which is as follows:

"Section seven of the Chiropractic Act states, in substance, that a licentiate of the State Board of Chiropractic Examiners is authorized to practice Chiropractic in the State of California, as taught in chiropractic schools or colleges, and also, use all necessary mechanical and hygienic and sanitary measures incident to the care of the body.

"In order that this Board may have a definite understanding of what is meant by the use of 'all necessary mechanical and hygienic and sanitary measures,' in connection with the practice of chiropractic, we would appreciate an official opinion from you relative to the meaning of that portion of section seven to which we have referred.

"We particularly desire to know if a licentiate of this Board may legally use, or hold himself out as using, electrotherapy, hydrotherapy, electronic medicine, etc., as therapeutical agencies in the treatment of disease; or, may he use mechanical agencies only for the purpose of analyzing or diagnosing disease, such as x-ray, stethoscope, neurocalometer, etc."

It would appear that the language of the act authorizing the use of chiropractors of "all necessary mechanical and hygienic and sanitary measures" incident to the care of the body in itself answers the question which you submit, for clearly, sciences, systems or methods for the treatment of disease, such as electrotherapy, hydrotherapy and other systems of treatment, do not come within the scope of chiropractic practice.

It is undoubtedly true that a duly qualified and licensed practitioner of chiropractic may make use of an x-ray machine for the purpose of analyzing or diagnosing the physical condition of a patient but would not be authorized under the act to make use of that machine for the treatment of disease or illness, for that would constitute the practice of medicine which is not included within the science of chiropractic.

The words of the statute in section 7, permitting the use of all necessary mechanical and hygienic and sanitary measures incident in the care of the body, must be construed in a sense restricted to chiropractic. In construing statutes wherein we have words of general sense in conjunction with words of a specific sense, the words of the greater general meaning are restricted by the words of more specific meaning. Take, for instance, the x-ray above referred to. The use of the x-ray therapeutically is the practice of medicine. The use of the x-ray in the chiropractic sense would restrict its use to purposes of analysis or diagnosis, to locate the position of the vertebrae and the relation of one vertebra to another.

This would seem to illustrate the difference between the use of the x-ray as a medical agent and its use as a chiropractic agent.

As to sanitary measures, there would no doubt be a greater range in the use of sanitation as contemplated in the practice of chiropractic than there would be in the use of mechanical measures. Sanitation is inherent in all the healing arts, but the sanitary measures to be used by chiropractors must be confined to those things which are strictly sanitary as distinguished from therapeutic measures used in medicine. Therefore, generally speaking all mechanical, hygienic and sanitary measures used by chiropractic licensees must be construed strictly with the chiropractic idea in mind.

I am therefore of the opinion, to directly answer your query, that a chiropractic practitioner is not, as such, authorized to employ electrotherapy, hydrotherapy, electronic medicine, etc., as therapeutic agencies in the treatment of disease but may with propriety use mechanical agencies such as the x-ray, stethoscope, neurocalometer, etc., purely for the purpose of analyzing or diagnosing for chiropractic treatment.

Very truly yours,
U. S. WEBB, Attorney General,
By LEON FRENCH, Deputy.

CONCLUSION

We have set forth herein what matters constitute chiropractic and ask that this honorable court declare that the petitioner has the right to practice those things only which are within the philosophy of chiropractic and that the use of all therapeutic and electrical appliances, as well as the prescribing of diets, are prohibited by the terms of Section 7 of the Chiropractic Act.

U. S. WEBB,
Attorney-General of the State of California.
LEON FRENCH,
Deputy Attorney-General of the State of California.
LIONEL BROWNE,
Deputy Attorney-General of the State of California.
Attorneys for Intervenor, The People of the State of California.

COURT DECISION ON CHIROPRACTIC CASE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN FRANCISCO*

Honorable John J. Van Nostrand presiding.

No. 257362

In the Matter of the Application of M. James McGranaghan, for Declaratory Relief, Plaintiff, vs. Dora Berger, Intervenor and Defendant, vs. Roy B. Labachotte, Intervenor and Defendant, vs. The People of the State of California, Intervenor.

MEMORANDUM OF OPINION

This is an action in declaratory relief instituted by M. James McGranaghan seeking an interpretation of Section 7 of the Chiropractic Act. Roy B. Labachotte, Dora Berger and the People of the State of California have filed separately complaints in intervention also asking for an interpretation of the same section, which reads as follows:

One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designed "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic

* This is the opinion handed down by Judge John J. Van Nostrand. For Brief on this case, see page 414. Editorial comment is made on page 380.